

APPEAL NO. 022041  
FILED SEPTEMBER 30, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 15, 2002. With respect to the single issue before him, the hearing officer determined that the Texas Workers' Compensation Commission (Commission) did not abuse its discretion in denying the appellant's (claimant) request to change treating doctors from Dr. K to Dr. B. In his appeal, the claimant asserts error in the hearing officer's resolution of the issue. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Reversed and remanded.

The issue before the hearing officer was "Is the claimant entitled to change treating doctors from [Dr. K] to [Dr. B] pursuant to Section 408.022?" In the discussion section of his decision the hearing officer states:

The hearing officer only reviews whether the [Texas Workers' Compensation Commission] commission's action on a change of alternate treating doctor was an abuse of discretion based on the information before the commission at the time of the approval. The hearing officer does not substitute the officer's judgment as to whether the officer would have granted the change.

While we acknowledge that the hearing officer's understanding that he was to review the initial action on the change of treating doctor request under an abuse of discretion standard, considering only the evidence before the decision-maker, came from a line of Appeals Panel decisions, we note that this type of limited review of the change of treating doctor issue is no longer permissible. Rather, at the hearing level, the hearing officer is to consider and resolve the issue of whether the claimant is entitled to a change of treating doctor under Section 408.022 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 126.9 (Rule 126.9). See Texas Workers' Compensation Commission Appeal No. 020022, decided February 14, 2002. To resolve that issue, on remand, the hearing officer must consider the evidence presented by each side within the context of the Section 408.022 and Rule 126.9.

We are also concerned by the portion of Findings of Fact No. 5 and 9, which state that "[n]o medical was attached to the request indicating that [Dr. K] was not providing appropriate medical care" in that the hearing officer appears to be imposing an absolute requirement that a request to change treating doctors be supported by medical evidence. We find no authority for such a requirement under either the 1989

Act or the Commission's rules. Rather, in resolving the issue of whether a change of treating doctor should be granted, the hearing officer should consider all of the evidence in the record and determine whether an appropriate basis, consistent with Section 408.002 and Rule 126.9, exists for granting a change of treating doctor.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Commission's Division of Hearings, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

The true corporate name of the insurance carrier is **TRANSCONTINENTAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
350 NORTH ST. PAUL  
DALLAS, TEXAS 75201.**

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Veronica Lopez  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge